



City of NORFOLK

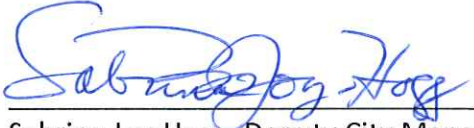
C: Director, Department of Finance

To the Honorable Council
City of Norfolk, Virginia

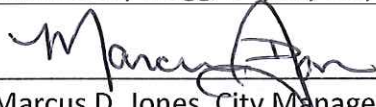
February 23, 2016

From: Christine Garczynski, Director of Finance

Subject: Authorization to enter into a Cooperation Agreement to pledge the City's full faith and credit equal to the debt service on a Revenue Note issued by the Economic Development Authority.

Reviewed: 
Sabrina Joy-Hogg, Deputy City Manager

Ward/Superward: Citywide

Approved: 
Marcus D. Jones, City Manager

Item Number: **PH-6**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** City of Norfolk

III. **Description**

This agenda item is an ordinance authorizing the City of Norfolk (the "city") to enter into a Cooperation Agreement to pledge the City's full faith and credit equal to the debt service coverage on a \$14.5 million Revenue Note issued by the Economic Development Authority (EDA). The funds will be used for an EDA project that will convert the former J.C. Penney store at Military Circle to an office building. Approval of this ordinance is required for the EDA to proceed with the EDA's Revenue Note transaction.

IV. **Analysis**

The EDA will issue a Revenue Note for \$14.5 million secured by a Cooperation Agreement with the city, which includes a full faith and credit pledge. Currently the EDA has a tenant committed for occupancy for roughly half of the square footage of the building. It is highly anticipated the EDA will be able to self-support this loan when additional tenants are secured. In addition, the EDA has the ability to refinance this loan at the end of its five-year term and eliminate the need for the city's pledge.

V. **Financial Impact**

The EDA has secured a loan for \$14.5 million. The EDA will utilize the revenue from the five-cent cigarette tax dedicated to the Department of Economic Development as a source to make debt

service payments. Cigarette tax revenue was previously dedicated for business development and retention by City Council in FY 2014. It is also anticipated the city may need to provide additional support should the EDA fall short in operating revenue during in the initial two years of the loan until other tenants are secured.

The City shall be obligated to make principal and interest payments on the EDA Revenue Note in the principal amount of \$14.5 million should EDA revenue (cigarette tax) or other EDA sources not be available for the project.

VI. Environmental

N/A

VII. Community Outreach/Notification

Public notification for this agenda item was conducted through the city's agenda notification process.

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter and ordinance have been coordinated with the Department of Development, Department of Finance, the City Attorney's Office, and the City Manager's office.

Supporting Material from the City Attorney's Office:

- Ordinance
- Cooperation Agreement

Form and Correctness Approved:

By Michelle B. Top
Office of the City Attorney

Contents Approved:

By Sabrina E. Vogt
DEPT. Budget & Strategic Planning

NORFOLK, VIRGINIA

Pursuant to Section 72 of the City Charter, I hereby certify that the money required for this item is in the city treasury to the credit of the fund from which it is drawn and not appropriated for any other purpose.

\$ N/A N/A
Christine Dancyard Account
Director of Finance 2/17/16 Date

ORDINANCE No.

AN ORDINANCE AUTHORIZING THE CITY OF NORFOLK TO ENTER INTO A COOPERATION AGREEMENT TO PROVIDE FOR THE PAYMENT OF NOTES ISSUED BY THE ECONOMIC DEVELOPMENT AUTHORITY AND TO PLEDGE THE CITY'S FULL FAITH AND CREDIT IN CONNECTION THEREWITH.

- - -

WHEREAS, the Economic Development Authority of the City of Norfolk (the "Authority"), owns the former J.C. Penney building (the "Building") at the Gallery at Military Circle, 880 N. Military Highway and has determined that it is advisable to issue its revenue notes (the "Notes") to finance the construction and equipping of the Building and costs of issuance associated therewith (collectively, the "Project"); and

WHEREAS, the Authority has entered into or will enter into a lease agreement for approximately 100,000 square feet of the Building and anticipates rents from such lease will pay a portion of the amounts due under the Notes; and

WHEREAS, the terms of the Notes shall be substantially as set forth in a proposal from Bank of America, N.A. dated

January 28, 2016 (as the same may be amended as permitted by this Ordinance, the "Proposal"); and

WHEREAS, pursuant to the Proposal, the lender has required the Notes be payable from funds provided by the City pursuant to a cooperation agreement with the Authority (the "Cooperation Agreement"), a copy of which is attached hereto as Exhibit A; and

WHEREAS, the City's obligation to make payments under the Cooperation Agreement, including without limitation payments equal to the debt service on the Notes (such obligation of the City to be hereinafter referred to as the "Obligation"), will be secured by the full faith and credit of the City, and as such, the Obligation will be a "general obligation bond" within the meaning of the Public Finance Act of 1991 (the "Public Finance Act"), Section 15.2-2600 et seq. of the Code of Virginia (1950), as amended (the "Virginia Code"); and

WHEREAS, a public hearing on the Obligation has been held after notice was published in accordance with the requirements of Section 15.2-2606 of the Virginia Code.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the Council of the City of Norfolk, Virginia (the "Council"), hereby finds and determines that it will benefit the inhabitants of the City through the promotion of their prosperity and welfare for the City to incur the Obligation and

contract such debt in an aggregate principal amount not to exceed \$14,500,000 pursuant to the terms and conditions as substantially set forth in the Proposal and the Cooperation Agreement. The Obligation shall be used to pay the costs of the Notes and the Notes shall be used to pay the costs of the Project.

Section 2:- That the Obligation shall be a general obligation of the City to which the full faith and credit of the City are hereby irrevocably pledged. The Council is hereby authorized to and shall levy and collect annually, at the same time and in the same manner as other taxes of the City are assessed, levied and collected, a tax upon all taxable property within the City, over and above all other taxes authorized or limited by law, and without limitation as to rate or amount, sufficient to pay when due the payments under the Obligation to the extent other funds of the City are not lawfully available and appropriated for such purpose.

Section 3:- That the Proposal may be amended, modified or supplemented, as may be approved by the City Manager of the City of the City of Norfolk (the "City Manager"), with such approval to be evidenced by the City Manager's execution and delivery of the Cooperation Agreement or other documents relating to the issuance of the Notes; provided however, that the Proposal (as amended, modified or supplemented) must comply with the parameters established for the Cooperation Agreement and the Notes in Section 4.

Section 4:- That the City Manager is hereby authorized to correct, amend, or revise the Cooperation Agreement as he may deem necessary in order to carry out the intent of the Council as expressed herein and to execute and deliver on behalf of the City the Cooperation Agreement as corrected, amended, or revised, subject to approval as to form and correctness by the Office of the City Attorney, and the City Clerk is hereby authorized to affix or to cause to be affixed the seal of the City to the Cooperation Agreement and to attest such seal.

Section 5:- The Council hereby authorizes the performance by the City of its obligations under the Cooperation Agreement. The Notes shall be in such

form and contain such provisions as the City Manager shall approve. The approval of the Cooperation Agreement or the Notes will be evidenced conclusively by the execution and delivery of the Cooperation Agreement, provided that the aggregate principal amount of the Notes shall not exceed \$14,500,000 and the maturity of the Notes shall not exceed five (5) years from the closing of the Notes.

Section 6:- That the City Manager and such other officers and agents of the City as the City Manager may designate, are hereby authorized and directed to take further action as he deems necessary or appropriate regarding the Obligation and the issuance of the Notes.

Section 7:- That the appropriate officers or agents of the City are hereby authorized and directed to file a certified copy of this Ordinance with the Circuit Court of the City pursuant to Sections 15.2-2607 and 15.2-2627 of the Virginia Code.

Section 8:- That the Council hereby elects pursuant to Section 15.2-2601 of the Virginia Code to incur the Obligation under the Public Finance Act of 1991, Chapter 26, Title 15.2 of the Virginia Code without regard to the requirements, restrictions or other provisions contained in the Charter of the City.

Section 9:- That this Ordinance shall be in effect from and after its adoption.

COOPERATION AGREEMENT

(EDA – City of Norfolk)

THIS COOPERATION AGREEMENT (“Cooperation Agreement”) is made and entered into as of the 23rd day of February, 2016, by and between the **ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF NORFOLK**, a duly organized and existing body corporate and politic constituting a political subdivision of the Commonwealth of Virginia (the “Authority”), and the **CITY OF NORFOLK, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia (the “City”).

RECITALS

WHEREAS, the Authority is duly established and its existence was validated pursuant to the Virginia Industrial Development and Revenue Bond Act (the "Act"), Chapter 49, Title 15.2 of the Code of Virginia of 1950, as amended (the “Code”); and

WHEREAS, the Authority is empowered under the Act to cooperate with the City in actions taken for the purpose of promoting economic development and the commerce, safety, health, welfare, convenience or prosperity of citizens of Virginia within the Authority's area of operation (which in the Authority's case is coextensive with the territorial boundaries of the City); and

WHEREAS, the Authority and the City, in connection with other public and private efforts, are vitally concerned with the attraction and retention of new businesses; and

WHEREAS, the Authority owns the former J.C. Penney building (the “Building”) at the Gallery at Military Circle, 880 N. Military Highway; and

WHEREAS, the Authority has entered into or will enter into a lease agreement for approximately 100,000 square feet of the Building (the “Lease”); and

WHEREAS, pursuant to the Lease, the Authority has agreed to renovation and equipping of the Building and to deliver the premises to Tenant at an estimated cost to the Authority of Eighteen Million and 00/100 Dollars (\$18,000,000.00); and

WHEREAS, on December 15, 2015, the Council of the City adopted Ordinance No. 46,176, appropriating Three Million Five Hundred Thousand and 00/100 Dollars (\$3,500,000.00) to “Support Economic Development” to be used towards the Project; and

WHEREAS, the Authority has determined that it is advisable to issue an Economic Development Revenue Note in the principal amount of Fourteen Million Five Hundred Thousand and 00/100 Dollars (\$14,500,000.00) (the "Note") to finance the remaining costs of renovation and equipping of the Building and the costs of issuance associated therewith (collectively, the "Project"); and

WHEREAS, the terms of the Note shall be substantially as set forth in the proposal from Bank of America, N.A. (the “Lender”) dated January 28, 2016, a copy of which is attached

hereto as Exhibit A (the "Proposal"); and

WHEREAS, the Lender has required the Note be payable from funds provided by the City pursuant to this Cooperation Agreement; and

WHEREAS, the City's obligation to make payments under this Cooperation Agreement, including without limitation payments equal to the debt service on the Note, will be secured by the full faith and credit of the City, and as such, the Obligation will be a "general obligation bond" within the meaning of the Public Finance Act of 1991 (the "Public Finance Act"), Section 15.2-2600 et seq. of the Code of Virginia (1950), as amended (the "Virginia Code"); and

WHEREAS, the Authority has represented to the City that the Project is expected to provide the following benefits to the inhabitants of the City, South Hampton Roads and the Commonwealth of Virginia:

- (i) Approximately 200 additional permanent full time jobs; and
- (ii) Stimulation of growth and revitalization in the Military Highway corridor of the City;

WHEREAS, Section 15.2-4905 (12) of the Code authorizes the Authority:

to accept contributions, grants and other financial assistance from . . . the Commonwealth, or any political subdivision, agency, or public instrumentality of the Commonwealth, for or in aid of the construction, acquisition, ownership, maintenance or repair of the authority facilities, . . . or in order to make loans in furtherance of the purposes of this chapter of such money, contributions, grants, and other financial assistance, and to this end the authority shall have the power to comply with such conditions and to execute such agreements . . . as may be necessary, convenient or desirable and to agree to such terms and conditions as may be imposed;

WHEREAS, Section 15.2-4901 of the Code concludes with the statement that "This chapter shall be liberally construed in conformity with these intentions," evidencing the legislative intent that all aspects of Title 15.2, Chapter 49 be broadly interpreted in order to promote and facilitate economic development in the Commonwealth and its localities; and

WHEREAS, on February 23, 2016, the Council of the City adopted Ordinance No. ____, approving this Cooperation Agreement, authorizing the execution and delivery hereof on behalf of the City and the performance of all obligations undertaken by the City under this Cooperation Agreement; and

WHEREAS, on February ____, 2016, the Board of Directors of the Authority adopted a resolution approving the form and substance of the Grant Agreement and this Cooperation Agreement, authorizing the execution and delivery thereof and hereof on behalf of the Authority, accepting the City's Grant, and authorizing the performance of, and agreeing to perform, all

obligations undertaken by the Authority under the Grant Agreement and this Cooperation Agreement; and

WHEREAS, the parties hereto desire to enter into this Cooperation Agreement for the purpose of setting forth their understandings and agreements in connection with the City's obligation to make principal and interest payments as debt service on the Note and the Authority's undertaking of the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the public benefits to accrue to the Authority, the City, South Hampton Roads and the Commonwealth, and the inhabitants thereof from the undertaking and carrying out of the Project and in consideration of the mutual covenants hereinafter set forth, the Authority and the City agree as follows:

1. City Obligations. In order to allow the Authority to undertake the Project, the City shall be obligated to make principal and interest payments as debt service on a Note in the principal amount of \$14,500,000 to finance costs related to the Project (such obligation of the City to be hereinafter referred to as the "Obligation"). The Obligation will be secured by the full faith and credit of the City, and as such, the Obligation will be a "general obligation bond" within the meaning of the Public Finance Act and Section 15.2-2600 et seq. of the Virginia Code. The City shall make such payments in accordance with the loan agreements entered into in connection with the Note, which agreements shall be subject to review and approval by the City. The Obligation shall be used to pay the costs of the Note, and the Note shall be used by the Authority to pay the costs of the Project.

2. Authority Obligations. The Authority agrees that the expenditure authorized hereby and any appropriations in future years for purposes of the Note shall be used exclusively for the costs of the Project. The Authority shall undertake the Project and shall use commercially reasonable efforts to lease the remaining area of the Building in order to secure a rental income stream sufficient to allow the Authority to refinance the debt and to allow the City to be released from the Obligation. All rents or other income received by the Authority under the Lease, from other leases of the Building, or from any sale or other transfer of the Building, less documented expenses incurred by the Authority for utilities, maintenance and repair of the Building, shall be paid by the Authority to the City within ten (10) days after receipt thereof by the Authority until such time as the City has been reimbursed for the principal and interests payments made on the Note by the City.

3. Non-Discrimination. In carrying out this Cooperation Agreement, the Authority and the City agree not to discriminate against any employee or applicant for employment because of race, color, religion, sex, age or national origin and agree to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to race, color, religion, sex, age or national origin. Such action shall include, but not be limited to employment, promotion, demotion, termination, rates of pay, other compensation, and selection for training including apprenticeship.

4. Applicable Law. This Cooperation Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the Commonwealth of Virginia. In the event of litigation hereunder, venue shall be in the Circuit Court of the City of Norfolk.

5. Notices. All notices or other communications required or desired to be given with respect to this Cooperation Agreement shall be in writing and shall be delivered by hand or by courier service, sent by registered or certified mail, return receipt requested, bearing adequate postage, or by reputable overnight carrier (such as Federal Express) and properly addressed as provided below. Each notice given by mail or overnight carrier shall be deemed to be given by the sender when received or refused by the party intended to receive such notice; each notice delivered by hand or by courier service shall be deemed to have been given and received when actually received by the party intended to receive such notice or when such party refuses to accept delivery of such notice. Upon a change of address by either party, such party shall give written notice of such change to the other party in accordance with the foregoing. Inability to deliver because of changed address or status of which no notice was given shall be deemed to be receipt of the notice sent, effective as of the date such notice would otherwise have been received.

If to the Authority:

Economic Development Authority of the City of Norfolk
500 East Main Street, Suite 1500
Norfolk, VA 23510
Attention: Executive Director

With a copy to:

Kaufman & Canoles
150 W. Main Street Suite 2100
Norfolk, Virginia 23510
Attention: George Consolvo, Esq.

If to the City:

City Manager
City of Norfolk
1101 City Hall Building
810 Union Street
Norfolk, Virginia 23510
Attention: City Manager

With a copy to:

City Attorney
City of Norfolk
810 Union Street, Suite 900
Norfolk, Virginia 23510
Attention: City Attorney

6. Binding on Successors in Interest. This Cooperation Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties hereto; provided, however, that in no event may this Cooperation Agreement or any of the rights, benefits, duties or obligations of the parties hereto be assigned, transferred or otherwise disposed of without the prior written consent of the other, which consent neither party shall be obligated to give.

7. Entire Agreement. This Cooperation Agreement constitutes the final, complete and exclusive written expression of the intents of the parties with respect to the subject matter hereof which will supersede all previous communications, representations, agreements, promises or statements.

8. Severability. If any one or more of the provisions contained in this Cooperation Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Cooperation Agreement shall be construed as if such invalid, illegal or unenforceable provision was not contained herein.

9. Amendment, Modification, Alteration. No amendment, modification or alteration of the terms of this Cooperation Agreement shall be binding unless in writing, dated subsequent to the date hereon and duly executed by the parties herein.

10. Headings. The titles of articles and sections of this Cooperation Agreement are for reference purposes only and shall be of no binding effect.

11. Waiver. The waiver by either party of any default or breach by the other party of any of the provisions of this Cooperation Agreement shall not be deemed a continuing waiver or waiver of any other breach by the other party of the same or another provision of this Cooperation Agreement.

12. Compliance with Laws. The parties shall comply with all applicable laws, ordinances and regulations with regard to any work, use, construction, and operation done or conducted with regard to this Cooperation Agreement.

13. Rights and Remedies Cumulative. The rights and remedies provided by this Cooperation Agreement are cumulative and the use of any right or remedy by either party shall not preclude or waive its rights to use any and all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

14. Authority to Execute Agreement. Each party represents that it has obtained all necessary approvals, consents and authorizations to enter into this Cooperation Agreement and to perform its duties under this Cooperation Agreement; the person executing this Cooperation Agreement on its behalf has the authority to do so; upon execution and delivery of this Cooperation Agreement by the parties, it is a valid and binding contract, enforceable in accordance with its terms; and the execution, delivery, and performance of this Cooperation Agreement does not violate any bylaw, charter, regulation, law or other governing authority of the party.

15. Counterparts. This Cooperation Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single document.

16. No Third Party Beneficiaries. This Cooperation Agreement is intended solely for the benefit of the parties hereto. This Cooperation Agreement is not intended and shall not be construed to benefit or create any rights for any third party. It is the express intent of the parties hereto that there be no third party beneficiaries hereof. [WILL NEED TO BE MODIFIED IF THE AUTHORITY CHOOSES LOAN WHERE AUTHORITY IS PAYOR SECURED BY COOPERATION AGREEMENT].

[SIGNATURE PAGES FOLLOW.]

WITNESS the execution of this Cooperation Agreement (EDA – City of Norfolk) by the duly authorized officials of the City and the Authority as of the day and year first set forth above.

CITY OF NORFOLK

By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO CONTENTS:

Deputy City Manager

APPROVED AS TO FORM AND CORRECTNESS:

Assistant City Attorney

[SIGNATURE PAGES CONTINUE ON NEXT PAGE]

**[CONTINUATION OF SIGNATURE PAGES TO COOPERATION AGREEMENT
(EDA – CITY OF NORFOLK)]**

ECONOMIC DEVELOPMENT AUTHORITY OF
THE CITY OF NORFOLK

By: _____
Name : _____
Title : _____

APPROVED AS TO CONTENTS:

Executive Director, Economic Development
Authority of the City of Norfolk

APPROVED AS TO FORM AND CORRECTNESS:

Counsel to the Economic Development
Authority of the City of Norfolk

CERTIFICATE OF FUNDING

I hereby certify that the money required for the obligations of the City of Norfolk under Cooperation Agreement is in the City Treasury to the credit of the fund from which it is to be drawn and not appropriated for any other purpose.

Account: _____

Amount: _____

Contract No. _____

Vendor Code: _____

Business License No.: _____

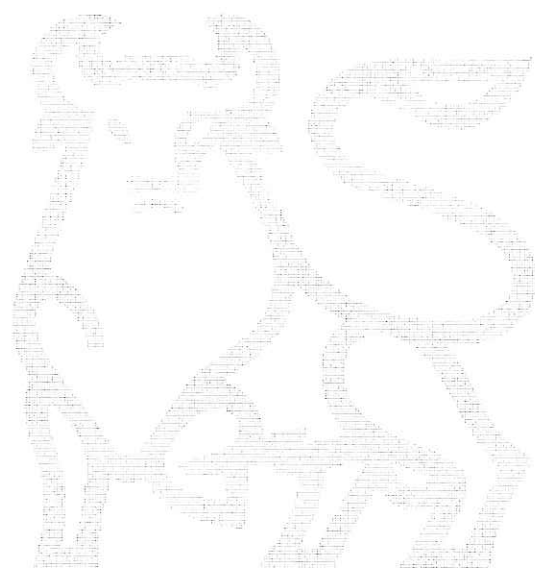
Director of Finance

Date

EDA of the City of Norfolk, Virginia

Proposal for a Economic Development
Revenue Note, Series 2016

January 28, 2016



Summary of Terms and Conditions

Submission date: January 08, 2016

Revision Date: January 28, 2016

Parties to the Transaction

Borrower: Economic Development Authority of the City of Norfolk, VA ("EDA")

Lender: Bank of America, NA ("Bank").

Credit Ratings:

	Long Term			Short Term		
	Moody's	S&P	Fitch	Moody's	S&P	Fitch
Ratings:	A1	A	A+	P-1	A-1	F1
Outlook:	Stable	Positive	Stable			

The Facility

Facility: Economic Development Revenue Note, Series 2016.

Facility Amount: Approximately \$14,500,000.

Maturity Date: Five years from Closing Date. Approximately February 18, 2021.

Closing Date: Facility is expected to close shortly after the February City Council meeting.

Tax Status: Taxable

Security: The Note will be payable from funds provided by the City of Norfolk ("City"), pursuant to a Cooperation Agreement executed prior to Closing Date. Under the terms of the Cooperation Agreement, the City will irrevocably pledge its full faith and credit in the form of a General Obligation for the payment of principal and interest on the Facility.

Collateral: Unsecured.

Use of Proceeds: Proceeds from the Facility, along with an additional cash contribution of \$3,500,000 by the City, will be used to fund building renovation and improvements to a property in Norfolk in preparations for future tenants.

Draw-Down Funding: The EDA will draw funds as needed. The EDA anticipates that all funds will be drawn by December 31, 2016.

Amortization: Required annual principal payments of \$100,000 will be made beginning February 1, 2017 through and including February 1, 2020. Additional optional principal payments may be made at anytime. Interest will be payable semi-annually in arrears on each February 1st and August 1st, beginning August 1, 2016.

Prepayment: Facility is prepayable at par at any time since a floating interest rate is being utilized.

Rates:

Interest Rate: One-Month LIBOR + 0.85%.

Default Rate: Interest Rate + 4.00%

Other Fees and Expenses

Bank Counsel: Bank will pay for Bank Counsel's review of Documentation. Bank will use Troutman Sanders as Bank Counsel.

Administrative Fees: None.

Payment of Fees and Expenses

Fees and Expenses Valid for 90 Days: All fees and expenses are subject to change if the transaction is not closed within 90 days from the date the Bank receives the written mandate from the Borrower.

Borrower Responsible For All Fees and Expenses: The Borrower will pay all reasonable costs and expenses associated with the preparation, due diligence, administration, and closing of all loan documentation including, without limitation, the legal fees of Bank Counsel, regardless of whether or not the Facility is closed. The Borrower will also pay the expenses of Lender in connection with the enforcement of any loan documentation.

Event of Default: If an Event of Default occurs, interest accrues daily on all outstanding principal at the Default Rate.

Other Standard Provisions

Indemnification: Indemnification language will be consistent with City's existing credit agreement with Bank of America.

Waivers / Amendments: Amendments and waivers of the provisions of the Documentation will require Lender approval.

Choice of Law / Jury Trial / Venue

Governing Law: Documentation shall be construed according to the laws of the Commonwealth of Virginia.

Venue: Any litigation involving the Bank shall be brought in the appropriate Virginia court having jurisdiction over the matter.

Description of the Basic Documentary Terms and Conditions

Documentation: Documentation is expected to include a Credit Agreement, Cooperation Agreement with the City, standard legal and/or tax opinions necessary for the financing, usual closing certificates, and any other loan documentation as required by Bank. The credit agreement will include, but not be limited to, the terms and conditions outlined herein, as well as provisions that are customary and standard with respect to conditions precedent, representations and warranties, covenants, events of default, and remedies.

Conditions Precedent To Closing:

The closing and the initial extension of credit under the Facility will be subject to satisfaction of the conditions precedent deemed appropriate by Lender including, but not limited to:

The negotiation, execution and delivery of definitive Documentation as outlined above and other customary closing documents for the Facility satisfactory to Lender.

There shall not have occurred any event or condition that has had or could be reasonably expected, either individually or in the aggregate, to have a Material Adverse Effect. "Material Adverse Effect" means (A) a material adverse change in, or a material adverse effect on, the operations, business, assets, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of the Borrower and any of its respective subsidiaries, taken as a whole; (B) a material impairment of the rights and remedies of Lender under any loan documentation, or of the ability of the Borrower to perform its obligations under any loan documentation to which it is a party; or (C) a material adverse effect upon the legality, validity, binding effect or enforceability against the Borrower of any loan documentation to which it is a party, in each case as determined in the sole discretion of Lender.

Receipt of satisfactory financial information, budgets, projections, etc. as requested by the Lender.

Certified copies of relevant ordinances, resolutions, agreements, contracts, certificates, etc.

Bring down of representations and warranties, receipt of statement as to compliance with covenants and of no Event of Default and any other event that, with the passage of time, the giving of notice, or both, would result in an Event of Default.

Other conditions precedent as are customary for a financing of the type contemplated, including payment of fees at closing.

Condition to Precedent to All Extensions of Credit:

Usual and customary for transactions of this type including, without limitation, the following:

- o All of the representations and warranties in the loan documentation shall be true and correct as of the date of such extension of credit.
- o No event of default under the Facility shall have occurred and be continuing, or would result from such extension of credit.

Representations and Warranties:

Usual and customary for transactions of this type including, without limitation, the following: (i) legal existence, qualification and power; (ii) due authorization and no contravention of law, contracts or organizational documents; (iii) governmental and third party approvals and consents; (iv) enforceability; (v) accuracy and completeness of specified financial statements and no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect; (vi) no material litigation; (vii) no default; (viii) ownership of property; (ix) insurance matters; (x) tax matters; (xi) ERISA compliance; (xii) identification of subsidiaries, equity interests and loan parties; (xiii) use of proceeds and not engaging in business of purchasing/carrying margin stock; (xiv) status under Investment Company Act; (xv) accuracy of disclosure; (xvi) compliance with laws; (xvii) bankruptcy and insolvency; and (xviii) no proposed legal changes which may adversely affect the Facility or the obligations of the Borrower thereunder or the transaction.

Covenants:

Usual and customary for transactions of this type, including, without limitation, the following: (i) timely delivery of audited financial statements, regulatory filings, compliance certificates and other information; (ii) notices of default, material litigation, material governmental proceedings or investigations, ERISA and environmental proceedings and material changes in accounting or financial reporting practices; (iii) payment of obligations; (iv) preservation of existence; (v) maintenance of properties and insurance; (vi) compliance with laws; (vii) maintenance of books and records; (viii) inspection rights; (ix) use of proceeds.

Reporting Requirements:

The Borrower shall provide the following financial information and statements in form and content acceptable to Lender:

- (a) Within 270 days after the close of each fiscal year of the Borrower, the complete audited financial statements of the Borrower;
- (b) Simultaneously with the delivery of each set of the financial statements referred to above, a certificate of the Borrower (i) stating whether there exists on the date of such certificate any Default or Event of Default and if so, the details thereof and the action which the Borrower is taking or proposes to take with respect thereto, and (ii) setting forth in detail, compliance with the financial covenants and the supporting calculations; and
- (c) Such other information respecting the affairs, condition and/or operations, financial or otherwise, of the Borrower as the Bank may from time to time reasonably request.

Events of Default: Usual and customary in transactions of this type including, without limitation, the following: (i) nonpayment of principal, interest, fees or other amounts; (ii) failure to perform or observe covenants set forth in the loan documentation; (iii) any representation or warranty proving to have been incorrect when made or confirmed; (iv) voluntary or involuntary bankruptcy, insolvency, debt moratorium, etc.; (v) monetary judgment defaults in an amount to be agreed and material non-monetary judgment defaults; (vi) customary ERISA defaults; (vii) actual or asserted invalidity or impairment of any loan documentation; and (viii) downgrade of City's G.O. rating below Baa2/BBB/BBB by Moody's, S&P, or Fitch.

Remedies: The Bank may - among other things - increase the interest rate pursuant to the Agreement, cause the Default Rate to apply to all outstandings under the Facility, and pursue any other remedies to which it is entitled under the Documentation.

Contacts

Bank of America, N.A.

Name:	Mark Tanis	Kevin Larkin
Title:	SVP & Senior Credit Officer	SVP & Senior Client Manager
Address:	302 S. Jefferson Street Roanoke, VA 24011	1 Commercial Place Norfolk, VA 23510
Telephone:	540-983-4826	757- 213-8243
Facsimile:	540-983-7994	757-441-8237
E-mail:	mark.tanis@baml.com	kevin.larkin@baml.com

Bank Counsel:

Bank Counsel: Troutman Sanders LLP
Name: Chris Vinyard
Address: 1001 Haxall Point
Richmond, VA 23219
Telephone: 804-697-1249
Facsimile: 804-698-5126
E-mail: chris.vinyard@troutmansanders.com

Proposed Terms and Conditions Subject to Certain Events

This Summary of Terms is intended only as an outline of certain of the material terms of the Facility and does not purport to summarize all of the conditions, covenants, representations, warranties and other provisions that would be contained in definitive documentation for the Facility contemplated hereby. This Summary of Terms is not a final commitment. It represents a willingness on the part of Bank to seek final approval to provide the commitment indicated herein and consummate the transaction based upon the terms and conditions outlined in this term sheet subject to:

Final credit approval (see "Credit Process Timeframe" below);

Absence of any material adverse change in the financial condition, operations or prospects of the Borrower, or in any law, rule or regulation (or their interpretation or administration), that, in each case, may adversely affect the consummation of the transaction, to be determined in the sole discretion of Bank;

Such additional due diligence as Bank may require; and

Agreement as to all final terms and conditions and satisfactory Documentation thereof (including satisfactory legal opinions).

Credit Process:

Final credit approval will take less than 10 days from the point at which the Bank is officially awarded the transaction and has in its possession all materials necessary to undertake its final review and analysis. Final credit approval is subject primarily to the review of final terms and conditions and Documentation.

Expiration:

Consideration of a financing based on the terms and conditions presented in this term sheet shall automatically expire 60 days from the date hereof. If the Bank issues a commitment, the Bank reserves the right to terminate, reduce or otherwise amend its commitment if the subject transaction is not closed within 60 days of the receipt of a signed term sheet.

**Future
Modifications:**

The terms, conditions, pricing levels and fees cited herein reference the financing and the Facility Amount as described in this Summary of Terms and Conditions and are subject to revision in the event that: (i) the Facility Amount changes; (ii) the security or transaction structure is modified; (iii) the transaction deviates materially from what was initially described in the RFP or in conjunction therewith; or (iv) the proposed financing does not close within 60 days of the receipt by Bank of America of a signed term sheet.

Confidentiality

This Summary of Terms and Conditions contains confidential and proprietary structuring and pricing information. Except for disclosure on a confidential basis to your accountants, attorneys and other professional advisors retained by you in connection with the Facility or as may be required by law, the contents of this Summary of Terms and Conditions may not be disclosed in whole or in part to any other person or entity without our prior written consent, provided that nothing herein shall restrict disclosure of information relating to the tax structure or tax treatment of the proposed Facility.

No Advisory or Fiduciary Role

Borrower acknowledges and agrees that: (i) the transaction contemplated by this Summary of Terms and Conditions is an arm's length, commercial transaction between the Borrower and the Bank in which the Bank is acting solely as a principal and for its own interest; (ii) the Bank is not acting as a municipal advisor or financial advisor to the Borrower; (iii) the Bank has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to the Borrower with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Bank has provided other services or is currently providing other services to the Borrower on other matters); (iv) the only obligations the Bank has to the Borrower with respect to the transaction contemplated hereby expressly are set forth in this Summary of Terms and Conditions; and (v) the Bank is not recommending that the Borrower take an action with respect to the transaction contemplated by this Summary of Terms and Conditions, and before taking any action with respect to the contemplated transaction, Borrower should discuss the information contained herein with its own legal, accounting, tax, financial and other advisors, as it deems appropriate. If Borrower would like a municipal advisor in this transaction that has legal fiduciary duties to Borrower then Borrower is free to engage a municipal advisor to serve in that capacity. This Summary of Terms and Conditions is provided to Borrower pursuant to and in reliance upon the "bank exemption" provided under the municipal advisor rules of the Securities and Exchange Commission, Rule 15Ba1-1 *et seq.*

Agreement by Borrower

Borrower hereby agrees to engage Bank of America to provide the Facility, which is the subject hereof, pursuant to the terms and conditions stated herein.

Please evidence your agreement with the foregoing by signing and returning a copy of the document to Bank of America.

Accepted and Agreed to:

By: _____

Date: _____